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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,459	09/29/2003	Jason A. Barba	8902.01	6656

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/671,459

Applicant(s)

BARBA, JASON A.

Examiner

Steven L. Weinstein

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Claims 17-36 are rejected under 35USC 112, first paragraph for containing New Matter. Claims 17 and 36 now recite that the interior layer is rigidly coupled to the carrier substrate. The specification does not apparent to recite the nature of the coupling between the layer and the carrier substrate. It is also not <sup>apparent</sup>~~apparent~~ that the specification supports the word "inedible" carrier. In claims 22 and 36, the phrase that the layer is "colored" to represent skin and flesh also appears not to be supported by the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tamasaki (jp '759) in view of Mederer (EP '841) and Neuhauser (Fr '593) or vice versa i.e. Mederer and Neuhauser in view of Tamasaki, both further in view of Manoski ('511), Heppe ('369), Mueller ('861), Renner ('529), Eales ('502), Josephson (D'277), Harris et al (D'859), Bernat (Ep '733), Gardner ('077), Oprean ('851), DeVillars (GB. '303), Sisco (D '782), and Swiss Colony Christmas Book (1982), further in view of Burt ('324), Burt ('997) and Musher ('700) for the reasons given in the Office action mailed 7/16/04.

New independent claims 17 and 36 now recite that the product is rigidly coupled to an inedible carrier. As noted previously, Eales, Oprean, Burt ('324), Burt ('997) and Musher all teach it was notoriously old to provide composite foods, including confection cores, and associate the composite food with a carrier or handle wherein the core is

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coupled to the handle. To modify the combination and provide a handle for its art recognized and applicants intended function of ease of handling would therefore have been obvious. Also, not only would the art show rigid coupling if applicant's assembly shows rigid coupling, but the art taken as a whole teach techniques wherein the handle is designed to provide good interlocking coupling. (e.g. Eales and Musher). In regard to the recitation that the product is colored to represent a recognizable object, Neuhauser, Heppe, Renner, and Mueller can all be relied on to teach composite confections which simulate real life, recognizable objects wherein the composite products have been colored to simulate the objects and to so modify the combination for its art recognized and applicants intended function would therefore have been obvious.

Applicant's remarks filed 10/18/04 have been fully and carefully considered but are not found to be convincing. Applicant appears to be urging limitations that are not found in some of the claims. For example, claims 17 and 36, the two independent claims, do not recite a three –dimensional shape of a human skull. However, even if they did, the claims would still not be patentable for the reasons fully and clearly detailed in the last Office action. That is, the art taken as a whole teaches it is notoriously old to provide edible composite products wherein each of the layer, or phases of the composite product represents in simulation both in appearance and color, a three dimensional recognizable article or shape including flesh and bone. Once it was known in the art to shape and color foods to produce such three dimensional articles, the particular recognizable object one chooses to represent is seen to have been an obvious matter of choice and/or design.

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It is urged that Tamasaki does not teach providing a carrier. Tamasaki is not applied alone under 35 USC 102, anticipation, but in combination under 35 USC 103, obviousness. The art taken as a whole is replete with references that associate handles with composite foods for their ease of handling and to modify the combination would therefore have been obvious. The handle is just that –a handle. It serves no other function, whether the products have recognizable shapes or not.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
January 28, 2005

Steven Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
1/31/05